

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

GARY A. FORST and BONITA A. FORST,

Plaintiffs,

v.

Case No. 07-CV-612

SMITHKLINE BEECHAM CORPORATION,
d/b/a GLAXOSMITHKLINE,

Defendant.

ORDER

On April 30, 2008, the plaintiffs filed an expedited motion to stay this action pending the United States Supreme Court's decision in *Levine v. Wyeth*, 944 A.2d 179 (Vt. 2006), *cert. granted*, 128 S. Ct. 1118 (2008), currently scheduled for oral argument to be heard in the October 2008 Term. The plaintiffs' complaint alleges, among other things, that the defendant failed to warn regarding serious side-effects of suicidality and akathisia associated with Paxil. (Compl. ¶18(d).) The defendant raised preemption as an affirmative defense in its answer to the plaintiffs' complaint and the plaintiffs anticipate that the defendant will raise this defense in a dispositive motion. The Supreme Court will address in *Levine* the question of whether state failure-to-warn claims against a drug manufacturer are preempted by federal law. The plaintiffs assert that a stay is appropriate because the *Levine* case is potentially dispositive of the defendant's affirmative defense of preemption.

The defendant opposes the motion to stay, asserting that there is no justifiable reason to stay the proceedings because it has not yet decided whether it will file a motion for summary judgment based upon federal preemption. The defendant also

states that it will file a motion for summary judgment based upon other independent grounds, including statute of limitations and the learned intermediary doctrine. The defendants note that a stay would prevent the development of these arguments unrelated to the *Levine* case.

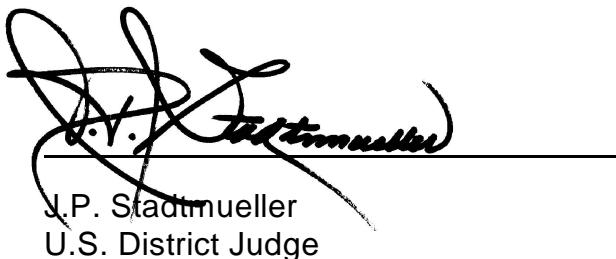
The court has inherent power to stay these proceedings, and may control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Texas Indep. Producers & Royalty Owners Ass'n v. EPA*, 410 F.3d 964, 980 (7th Cir. 2005). Here, given that the *Levine* case may have no impact on this case, the court concludes that a stay pending a decision in the *Levine* case is not warranted. However, in the event that the defendant files a motion for summary judgment on the basis of federal preemption, and the issue of federal preemption becomes central to this case, the plaintiffs' may file a new motion to stay pending the Supreme Court's decision in *Levine*.

Accordingly,

IT IS ORDERED that the plaintiffs' expedited motion to stay all further proceedings in this action (Docket # 20) be and the same is hereby **DENIED** without prejudice.

Dated at Milwaukee, Wisconsin, this 6th day of June, 2008.

BY THE COURT:



J.P. Stadtmauer
U.S. District Judge